

IN THE CIRCUIT COURT OF THE 16<sup>th</sup> JUDICIAL CIRCUIT OF  
THE STATE OF FLORIDA, IN AND FOR MONROE COUNTY,

APPELLATE DIVISION

Case No.: 24-CA-1134-M

KEARNS CONSTRUCTION COMPANY,

Petitioner,

v.

MONROE COUNTY, a political subdivision  
of the State of Florida,

Respondent.

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**ORDER ON PETITION FOR WRIT OF CERTIORARI**

**THIS CAUSE** is before the Court on Kearns Construction Company's ("Petitioner") Petition for Writ of Certiorari to review Monroe County's ("Respondent") denial of Petitioner's bid protest. Having heard arguments of counsel, considered Petitioner's Petition, Respondent's Response in Opposition to the Petition, Petitioner's Reply, pertinent legal authority, and being otherwise fully advised in the premises, the Court finds and orders as follows:

**I. Factual and Procedural Background**

On August 3, 2024, Respondent published a request for proposals No. 568 (RFP) seeking proposals for the deployment of artificial reef materials to the Gulfside Ten (10) Mile Reef. (Pet. App. 1-74). The RFP required each proposal to be accompanied by a proposal security in the form of a certified check made payable to Respondent, or in the form of a bond from a surety

company authorized to do business in Florida. (Pet. App. 14). Respondent reserved the right to waive informalities, technical errors, variations, and irregularities in any or all proposals that did not render the proposal non-conforming. (Pet. App. 13). Respondent's Notice of Request for Competitive Solicitations directed all proposers to submit their bids by 3:00 PM on Wednesday, August 28, 2024. (Pet. App. 3).

Respondent received bids from Biscayne Towing & Salvage, Inc. ("Biscayne"), Kearns Construction Company ("Petitioner"), and Adventure Environmental, Inc. (Pet. App. 79). On September 19, 2024, the County's Selection Committee ranked these bids based on their price and compliance with required forms such as the Proposal Security (Bid Bond). (Pet. App. 14, 75-79). On September 24, 2024, the County's Selection Committee ranked Biscayne's bid the highest and issued a recommendation to the Monroe County Board of County Commissioners to award the contract for RFP No. 568 to Biscayne. (Pet. App. 82).

Petitioner filed a formal bid protest on October 11, 2024, arguing that Biscayne submitted a non-conforming bid which required Respondent to award the project to Petitioner, the second-highest bidder. (Pet. App. 208). In its bid protest, Petitioner argued that Biscayne submitted a non-conforming bid because Biscayne's Bid (Proposal) Bond form lacked the name of the proposer, the surety company, and the surety's signature. (Pet. App. 205).

On October 16, 2024, the Board of County Commissioners (BOCC) held a meeting to award the contract for RFP No. 568. (Pet. App. 231). During the meeting, the BOCC heard Petitioner's bid protest where both the Petitioner and the Respondent presented their arguments and submitted evidence. (Pet. App. 233-245). Petitioner argued that Biscayne submitted a non-conforming bid with a material defect that could not be cured because it lacked a completed Bid (Proposal) Bond form before the proposals were opened. (Pet. App. 235-240). Respondent argued that Biscayne cured this defect by submitting a cashier's check after the proposals were opened and that the BOCC should approve Biscayne's proposal. (Pet. App. 243-244).

After conducting a quasi-judicial hearing on Petitioner's bid protest, the BOCC denied the bid protest and affirmed the County Selection Committee's recommendation to award the contract for RFP No. 568 to Biscayne. (Pet. App. 244-45).

On November 8, 2024, Petitioner filed a petition for writ of certiorari seeking to quash Respondent's decision to deny Petitioner's bid protest and award the bid to Biscayne.

## **II. Standard of Review**

First-tier certiorari review is limited to reviewing whether procedural due process is accorded, whether the essential requirements of law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). Neither party raised the issue of

procedural due process and it is not at issue in this proceeding. Regarding the evidence, circuit courts are not permitted to analyze the record and make their own factual findings. See *Haines City Com'ty Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995). Circuit courts cannot usurp the fact-finding authority of the agency and are constrained to determining whether the agency's decision is supported by competent substantial evidence. See *Florida Power & Light Co. v. City of Dania*, 761 So. 2d 1089, 1093 (Fla. 2000).

### **III. Analysis**

#### **A. Adherence to the Essential Requirements of Law**

Petitioner argues that Respondent departed from the essential requirements of law by failing to apply Section 2-347 of the Monroe County Code and awarding the contract for RFP No. 568 to Biscayne who failed to submit a Proposal Security (Bid Bond) before the proposals were opened and was permitted to bring its bid into conformance with the specifications after the bids were opened.. Respondent, however, contends that it adhered to the essential requirements of law because the missing Bid Bond did not constitute a material deviation from bid specifications and Biscayne cured this defect by providing a cashier's check before the BOCC voted to award the contract to Biscayne.

A circuit court reviewing an agency action looks to whether the agency "applied the correct law," which is synonymous with "observing the essential requirements of law." *Haines City Cmty. Dev.*, 658 So. 2d at 530.

An administrative agency departs from the essential requirements of law if it applies the wrong law. *Id.* at 531 n.7.

In this case, the Respondent departed from the essential requirements of law by failing to apply the correct law to the evidence. Code Section 2-347(i) provides that:

Each bid to a competitive solicitation for a construction project estimated to be **\$200,000 or more** must be accompanied by a good faith bid security in an amount equal to five percent of the bid price by way of a bid bond from a surety insurer authorized to do business in Florida as a surety or any method permitted in F.S. § 255.051, and as amended, pursuant to Monroe County Code section 2-347(i). . . The county administrator or his designee shall have discretion to require a good faith bid security for construction projects estimated to be less than \$200,000.00.

Since the RFP required each proposal to be submitted with a proposal security and Biscayne submitted a bid for \$440,000, Respondent needed to apply Section 2-347(i) of the Code to determine whether to affirm the County Selection Committee's recommendation to award the contract for RFP No. 568 to Biscayne. (Pet. App. 58, 81-83). Although Biscayne submitted its bid without the required proposal security, Respondent deemed this irregularity to be immaterial because Biscayne submitted a cashier's check after the proposals were opened to ensure that all proposers were on a level playing field. (Pet. App. 243; Resp. App. 157). However, Section 2-347(j) of the Code prohibits this practice by providing that "[a]ll responses must be sealed and submitted before the time described in the published notice for the bid opening [and that] [a]ny responses submitted after that time shall not be considered."

The Court finds that Respondent departed from the essential requirements of law by failing to apply both Section 2-347 of the Code and its own proposal criteria in the RFP. The legislative intent is clear from the plain language of the section and thus Code Section 2-347(i) requires every bid for a construction project estimated to be \$200,000.00 or more to be accompanied by a proposal security and Code Section 2-347(j) prohibits a proposer from submitting responses after the bid opening. Additionally, Article I. Section D. of the RFP required each proposer to attach a Bid (Proposal) Bond to their bid. (Pet. App. 13-14). Although Florida Courts may exercise judicial deference in public agency competitive bidding disputes, they do not do so when there is evidence that the agency engaged in illegality, fraud, oppression, or misconduct. See *Department of Transportation v. Groves-Watkins Constructors*, 530 So. 2d 912, 913 (Fla. 1988). In this case, Respondent could not permit Biscayne to submit a proposal security once the proposals were opened because allowing Biscayne to bring its bid into conformance with the specifications after the bids were opened exceeded the County's authority. See *City of Opa-Locka v. Trustees of Plumbing Indus. Promotion Fund*, 193 So. 2d 29, 31-32 (Fla. 3d DCA 1966)

Moreover, the Second District also relied on this principle of law and held that a city could not permit a proposer to subsequently amend its bid after the submission deadline to conform to the specifications in the original proposal.. See *Harry Pepper & Assocs., Inc. v. City of Cape Coral*, 352 So.

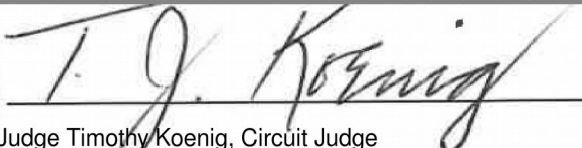
2d 1190, 1193 (Fla. 2d DCA 1978) (“Though the facts of Opa-Locka and this case are dissimilar, in both instances the municipal authority permitted the bidder to bring his bid into conformance with the specifications after the bids were opened. Our sister court did not approve of this procedure, nor can we.”).

Therefore, by permitting Biscayne to bring its bid into conformance with the specifications in the RFP after the bids were opened, Respondent departed from the essential requirements of law.

#### **IV. Conclusion**

Having found that Respondent departed from the essential requirements of law, the Court is compelled to **GRANT** the Petition for Writ of Certiorari and **QUASH** the Respondent’s decision to deny Petitioner’s bid protest and award the bid to Biscayne.

**DONE AND ORDERED** at Key West, Monroe County, Florida this Friday,  
June 27, 2025

44-2024-CA-001134-A0-01MR 06/27/2025 03:46:28 PM  
  
Judge Timothy Koenig, Circuit Judge  
44-2024-CA-001134-A0-01MR 06/27/2025 03:46:28 PM

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